

**Government of the District of Columbia**  
**ZONING COMMISSION**



ZONING COMMISSION ORDER NO. 660  
Case No. 89-5C  
(PUD @ 2101 Penn. Ave., N.W.)  
April 23, 1990

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on September 18 and 21, 1989. At those hearing sessions, the Zoning Commission considered an application of Square 74 Associates, which requested consolidated review and approval of a Planned Unit Development (PUD), pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on January 24, 1989, requested consolidated review and approval of a PUD for lots 9, 26, 27, 47, 48, 800, 806, 807, 812, 825, 829, 834 and 837 in Square 74, located at 2101 Pennsylvania Avenue, N.W. No change of zoning was requested.
2. The applicant proposes to construct an eleven-story (K St. elevation) office building with a 400-seat repertory movie theater/performing arts facility, dining facilities, and neighborhood-serving retail uses.
3. The PUD site is located in a C-3-C zone district, measures 72,090 square feet in land area, and is bounded on the north by K Street, the east by 21st Street, the south by Pennsylvania Avenue, and the west by 22nd Street, N.W.
4. The PUD site is partially improved and included several commercial uses including the former Group Health Association West End Medical Center, a surface parking lot and several low-rise retail uses.
5. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development including office, retail, housing, and mixed uses to a maximum height of ninety feet, a

maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one hundred percent.

6. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD. The Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for height, FAR, Lot occupancy, parking, and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment (BZA).
7. The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital shows the area of the PUD site in the high density commercial land use category.
8. On May 8, 1989, at its regular monthly meeting, the Zoning Commission authorized the scheduling of a public hearing, requested the applicant to provide one or more alternative design schemes for consideration, and referred the project to the Commission of Fine Arts for review and comment.
9. The original PUD design scheme proposed a project containing 609,913 square feet of gross floor area (approximately 70,000 square feet of retail space and approximately 530,000 square feet of commercial office space above-grade). The below-grade parking comprised two full floors of parking plus four additional partial floors. The project had a maximum FAR of 8.29, a maximum height of 130 feet, a lot occupancy of 100 percent and on-site parking to accommodate 663 cars.
10. The alternative PUD design scheme proposed a project containing 637,341 square feet of gross floor area (approximately 76,166 square feet devoted to retail uses and approximately 560,671 square feet devoted to office uses). The below grade parking comprised two full floors of parking plus four additional partial floors. The project had a maximum FAR of 8.66, a maximum height of 130 feet, a lot occupancy of 92 percent and on-site parking to accommodate 514 cars.
11. The proposed mixed use project rises 119 feet in height to the top of the roof cornice and 136 feet in height to the top of the penthouse, has a total FAR of 8.84 exclusive of the FAR attributable to the mechanical penthouse and occupies approximately 92 percent of the site.

12. The project includes three vehicular entrances to the parking garage at K Street, at Pennsylvania Avenue, and from the proposed private alley. The parking will consist of six levels (five levels plus one mezzanine) of below grade parking and will contain a total of 508 parking spaces.
13. The project includes a total of five loading berths with platforms and two 10' by 20' service delivery spaces. Of the five loading berths, four measure 12' x 30' and one measures 12' x 55' in length. All loading activities will occur within the confines of the site. Access to the loading area is by way of the alley entered from K and 21st Street, N.W.
14. To achieve the development objective of producing a project of exceptional architecture merit, the applicant retained an internationally acclaimed architect whose objective in designing the proposed project was to acknowledge both the classical residential architecture which is typical of the surrounding area as well as the monumental character and presence which typifies Pennsylvania Avenue.
15. Specific design elements of the project, as modified, include a ten-story turret situated at the site's apex adjacent to 22nd Street; and entrance court on Pennsylvania Avenue defined by a 3-tiered open arcade; and a smaller turret at the corner of Pennsylvania Avenue and 21st Street. The building facade will feature a quality mix of materials including distinctive natural stone, precast concrete and glass. Internally, the project will offer an interconnecting series of luxurious pedestrian spaces which offer access to the project's retail shops and restaurants as well as provide a through-square pedestrian connection between a 3-story atrium and a rotunda-shaped lobby which overlooks the theater foyer located at the 3rd cellar level.
16. The 400 seat repertory movie theater/performing arts facility is proposed as a major project amenity. The theater will be located on the 3rd cellar level and extend upward into the 2nd cellar level of the building. The theater will have a total gross floor area of approximately 29,548 square feet.
17. The applicant indicated that the theater will replace and expand the Circle Theater, which opened in March 1910 and operated out of a rowhouse at 2105 Pennsylvania Avenue, N.W. In 1935 the original Circle Theater was demolished, rebuilt at the same location, and continued to operate until 1986 when it closed.

18. The applicant testified at the public hearing that the provision of a theater in a mixed use project is a difficult, costly venture. The large amount of vertical space required for a theater displaces a significant amount of rentable office space. To accommodate a large visually constructed auditorium, costly transfer girders must be substituted for typical support columns. Theaters also demand additional parking thereby escalating excavation costs and additional soft costs; i.e., financing and design are apt to be incurred.
19. Theaters entail a high degree of risk because most theater and other performing arts groups are able to pay at most minimal rent. Consequently, theaters are not self-supporting businesses. Most theaters rely heavily on grants, contributions and fund raising drives to ensure their financial viability.
20. The applicant intends to form a nonprofit organization, the Circle Arts Society, to manage the finances, scheduling, and operations of the theater. To ensure the theater's financial viability, the applicant will lease the theater to the Circle Arts Society with no base rent (i.e., excluding pass through operating charges, such as real estate taxes, utilities and other normal charges) for 25 years. The Circle Arts Society in turn will underwrite the theater's operating costs for 15 years. The applicant has agreed to guarantee this operating subsidy.
21. The programming of live theater productions will be undertaken by Circle Arts Society in conjunction with a theater advisory board. The Advisory Board will consist of five members, two appointed by the Circle Arts Society and three appointed by the D.C. Commission on Arts and Humanities. In appointing these members, the arts commission will be encouraged to seek representation from among community arts groups in Wards 5, 7 and 8.
22. The applicant indicated that the theater will be available for live theater productions for a minimum of 18 to 26 weeks per year. The theater will be available for performing arts groups for an average fee of \$750.00 during the theater's first year of operation. This fee is well below market rate for comparable theater space and is established for purposes of providing affordable space to local groups in need of mid-size performing space.
23. Repertory films will be shown at the theater for a minimum of 26-34 weeks per year. Continuing the tradition of the old Circle Theater, the project's

theater will provide a forum for classical films and other cultural film productions. In the same spirit, the applicant envisions the theater as a space for various special film events such as the D.C. Filmfest. Ticket prices for repertory films will be well below the admission price of a first run, commercial movie.

24. A second arts related amenity proffered by the applicant is the arts scholarship program. The applicant proposes to establish a foundation to provide college scholarships for graduates of the Duke Ellington School desirous of pursuing further study in drama, film, or other performing arts. The foundation will be established by a grant from the applicant in the amount of one million dollars (\$1,000,000). The primary goal of the foundation will be to encourage needy students interested in the arts to graduate from high school and attend college. By providing college tuition assistance, the foundation hopes to eliminate financial inability as a reason for a student's failure to obtain a college education. The foundation will also sponsor cinema-related seminars, lectures and programs involving participants from the film industry for interested D.C. Public School students.
25. Other amenities included in the applicant's proposal consist of an executed Memorandum of Understanding between the applicant and the Minority Business Opportunity Commission; an executed First Source Agreement between the applicant and the Department of Employment Services; the generation of in excess of \$4 million in increased real estate taxes; additional revenue for the City in the form of sales employment and other revenue sources; and the creation of approximately 2,000 permanent jobs upon completion of the project.
26. The applicant expressed a willingness to assist Advisory Neighborhood Commission - 2A to improve a small park in the 2100 block of G Street, N.W. by developing a tot lot, and agreeing to contribute a maximum of \$50,000.00 for park improvements plus a maintenance program for ten years.
27. At the request of ANC-2A, the applicant agreed to offer financial assistance to the West End Tenants Association (WETA), which is involved as a plaintiff in a civil action against George Washington University. The objective of the civil action is to win the right to purchase their building at 2124 I Street, N.W. In subsequent negotiations with the ANC, the applicant agreed to place \$100,000 in an interest bearing escrow account. Assuming WETA is successful, the money could then be used to reduce costs associated with the purchase of the building. If WETA's civil suit failed,

the applicant proposes to contribute the money to an organization serving the homeless.

28. The applicant has requested certain flexibility in its final design and plans as follows:

- a. Varying the location and design of all interior components, including, but not limited to, partitions, structural slabs, doors, hallways, columns, stairways, machine room, and electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building;
- b. Making minor adjustments to the Pennsylvania Avenue and K Street facades, including the use of a theater marquee porte cochere over the K Street entrance and a porte cochere over the Pennsylvania Avenue entrance and the use of awnings over the retail space fronting on all thoroughfares;
- c. Making minor adjustments in the facade window and entrance detailing, including the flexibility to shift the location of the windows and doors to the retail uses on the ground floor to accommodate the needs of the retail tenants and the flexibility to change the width and location of the doors to the building lobbies;
- d. Varying the location and type of exterior lighting fixtures;
- e. Varying the species of plant materials set forth in the landscaping plan;
- f. Varying the final selection of the exterior materials within the materials types as proposed, based on availability at time of construction;
- g. Varying the arrangement of the parking spaces and modification to the below-grade space to accommodate the needs of the theater, retail and office tenants;
- h. Varying the amount of retail commercial space provided in the project, depending on market conditions;
- i. Varying the amount of square footage to be devoted to theater support space, including accessory office space, storage areas, rehearsal space, dressing rooms, entrance foyer and concession areas depending upon the specific needs of the theater companies and the theater operator which will manage and utilize the space;

- j. Varying the amount of vault space to be used for parking, as permitted by the Department of Public Works;
  - k. Varying the height of the elevator machine room within limits of the maximum height prescribed by the Zoning Regulations (18'5);
  - l. Varying the design of the exterior facade to include railings where required for safety purposes such as the roof top terrace, 6th floor balconies, and turret balconies; and
  - m. Varying other design aspects of the project in order to comply with fire and building code requirements.
29. By written report and testimony at the public hearing, the applicant's economic expert presented information to the Commission on the value of the applicant's proposed theater amenity and, based on this value, the additional FAR needed to carry the project. The economic expert concluded an FAR of 9.282 (2.781 above the C-3-C matter of right FAR of 6.5) is necessary to offset the additional construction and operating costs associated with the theater, the arts scholarship program, and the project's superior design.
30. The expert estimated the value of the total financial loss associated with the theater at \$13,708,432. This figure includes the theater's 15-year operational losses of \$11.3 million as well as excess construction costs associated with theater construction and finishing. To subsidize this loss, a minimum of 1.66 additional FAR is required. The \$1 million dollar scholarship contribution requires an additional 1.121 FAR while the costs associated with exceptional design necessitates 1.0 of additional FAR.
31. By written report and testimony, the applicant's transportation expert concluded the project will not adversely impact traffic conditions in the area. The expert noted the existing street system is adequate and operating at acceptable levels of service, and there would be no deterioration of these levels of service resulting from the development. Moreover, public transportation in the immediate vicinity is excellent and will be well used by employees and visitors to the building. Finally, the expert concluded there is adequate parking and loading facilities on the site to meet peak demands.

32. The District of Columbia Office of Planning (OP), by memorandum submitted on September 8, 1989, recommended approval of the application. In so doing, OP stated:

"The applicant's request for a consolidated review and approval of a PUD at 2101 Pennsylvania Avenue, N.W. has undergone a comprehensive evaluation by the Office of Planning. The city is supportive of this project's contribution in providing a new repertory movie theater/performing arts facility as well as retail space. The proposed PUD does not impair the intent, purpose, and integrity of the Zoning Regulations and is consistent with the Comprehensive Plan of the District of Columbia.

The Office of Planning is of the opinion that the proposed project is responsive to the PUD process and that the amenities offered by the applicant are appropriate in terms of the zoning relief being sought. The applicant has made a substantial effort in addressing the concerns of the Zoning Commission, the Office of Planning and the Commission of Fine Arts with respect to the building's mass and architectural detailing. The Office of Planning believes that a project design has emerged which is architecturally fine-tuned and is compatible with existing buildings in the vicinity of the site."

33. The District of Columbia Department of Public Works (DPW), by memoranda dated September 5 and 18, 1989, concluded that traffic generated by the development can be accommodated by the local street system. DPW also indicated that both the level of proposed parking and loading facilities is adequate to support the development. Further, DPW approved the project's three access points as well as three laybys proposed for K Street, Pennsylvania Avenue and 21st Streets, N.W. Finally, DPW found there to be sufficient water and sewer capacity for the project's additional needs.
34. The District of Columbia Office of Business and Economic Development (OBED), by memorandum dated September 18, 1989, offered no objections to the proposed increase in building height and density and viewed the amenity package as in the public interest. OBED valued the amenity package as approximately equivalent to an additional density range of between 1.1 and 1.3 FAR. OBED believed this density increase reasonably compensated the applicant for the costs of



amenities provided as well as a substantial "incentive cushion".

35. The District of Columbia Metropolitan Police Department (MPD), by memorandum dated September 7, 1989, expressed no opposition to the project noting the attorneys for the applicant submitted a letter to the MPD detailing the building security measures envisioned for the project. The MPD was of the opinion that these measures adequately address the concerns of the MPD and will ensure a secure physical environment for tenants, patrons and neighbors.
36. The District of Columbia Department of Recreation (DOR), by memorandum dated August 30, 1989, expressed no objections to the project. DOR indicated that the project should not have a negative impact on existing parks and recreation facilities in the immediate area nor create new demands for services provided by the agency.
37. The District of Columbia Department of Finance and Revenue (DFR), by memorandum dated September 11, 1989, expressed general support for the requested additional FAR in exchange for amenities such as the theater. DFR estimates that at least \$3 million in revenues will be generated from the development.
38. The District of Columbia Department of Housing and Community Development (DHCD) indicated it had no direct input into the case but suggested consideration of a suitable linkage payment in future cases.
39. The District of Columbia Fire Department (DCFD), by memorandum dated August 22, 1989, indicated that it had no objections to the project, provided the applicant complies with the fire protection and life safety provisions of the District of Columbia Construction Codes (BOCA and Amendments), as listed in D.C. Law 6-216.
40. The Commission of Fine Arts, by letter dated August 8, 1989, expressed no objections to the revised design, as contained in the applicant's prehearing submission dated July 20, 1989.
41. Advisory Neighborhood Commission (ANC) 2A, by report dated September 18, 1989, supported the revised proposal, subject to the following:
  - a. The provision of the amenity package presented to the ANC and other governmental bodies;

- b. The condition precedent that the developer plan, develop and endow the maintenance of a park located at the School Without Walls in ANC 2A;
  - c. The condition precedent that the applicant develop a traffic management plan to reduce vehicular traffic generated by the occupation of the building; and
  - d. The developer's agreement to work with the ANC and WETA to attempt to maintain the West End Apartments as viable residential units for current and other long term residents.
42. Maria Tyler, the Single-Member District Commissioner for ANC 2A03, was admitted as a party. Ms. Tyler, by letter dated August 25, 1989 and by testimony presented at the public hearing, opposed the application because of adverse environmental and social impact. Ms. Tyler believed that the quality of life for residents in the area would faster deteriorate because of increased traffic, the scale of the PUD project and the absence of a residential component.
43. Numerous representatives of performing arts groups appeared at the hearing and/or submitted statements to the record in support. The testimony and written submission of these proponents urged the Zoning Commission to recognize the critical shortage of affordable performing space in the city of the size proposed by the applicant and the contribution the proposed theater, with its proposed, modest use fees, could make to the artistic development and growth of numerous groups city-wide. Testimony from this group also focused on the accessibility of the subject theater and the opportunity this presented for desegregating the city's cultural activities.
44. By letter dated September 18, 1989, Councilmember John Wilson expressed support for the project. Councilmember Wilson noted the project, with its proposed amenities, will be a welcome addition to an underutilized site.
45. The Foggy Bottom Citizens' Association (FBCA), by written submission dated September 21, 1989 and by testimony at the public hearing, opposed the project. FBCA opposed the project because of its excessive density; the failure of the applicant to provide adequate parking; the traffic contribution of the project to an already congested traffic situation at Washington Circle; and the failure of the applicant to provide sufficient neighborhood public amenities or benefits.

46. The West End Tenants Association (WETA), by written submission dated September 21, 1989 and testimony at the public hearing, opposed the project. WETA's primary objection focused on the destruction of an apartment house on the site and the subsequent failure to include a housing component in the amenities package to compensate for this loss of residential units. By way of compensation, WETA believed it appropriate to include as part of the application amenity package a housing linkage component. The specific linkage project proposed was preservation of the West End Apartments as a housing unit for permanent, long-term residents.
47. The Service Employees International Union (SEIU) Local 25, by submitted statement and by testimony presented at the public hearing, opposed the application because the management company for the applicant was a party to a banning of SEIU members from entering buildings it managed. SEIU requested the Zoning Commission to condition any approval upon compliance with the Human Rights Act.
48. On November 13, 1989, at its regular monthly meeting, the Zoning Commission considered the application for proposed action. The Commission deferred action on the application and reopened the record for the applicant to submit a revised application addressing the proposed height and bulk of the proposed project, identity of the theater in the project, and the adequacy of the proposed PUD amenities package.
49. On December 6, 1989, the applicant submitted a revised application which incorporated a number of changes designed to respond to the Zoning Commission's concerns regarding the project's height and bulk, theater identity, and adequacy of the amenity package. The revised project plans set the Pennsylvania Avenue facade back 22'6" from the property line at the 100-foot wide central (entrance) bay from floors 1 through 8, and 32'-6" at floors 9 through 10. The increased depth of the setback (previously 8'-9") divides the project facade into two equal wings linked by an entrance court. This recess, along with the addition of a pergola (trellis) at the 9th floor, helps to vary the roof line, further accentuating the central portion of the facade.
50. Further, the proposed recess divides the building's composition and massing into several parts; turrets define the corners of the site while symmetrical wings, divided into 3 bays each, flank a recessed arcade and planted entry. As revised, the Pennsylvania Avenue facade recalls the scale, massing, and variety of a

traditional urban street while acknowledging the project as a single building by a single designer.

51. The December 6, 1989 project revisions also enhanced the theater subsidy package. According to the revised proffer, at the end of the initial 15-year period of the theater's existence, if the actual amount of subsidy paid by the applicant for the theater's operating costs is less than the \$11.3 million anticipated by the applicant's economic expert, the applicant agreed to pay the balance to the Circle Arts Society. The Circle Arts Society will apply these funds to the operating costs of the theater for the remaining 10 years of its lease.
52. To ensure a strong identity for the theater within the project, the December 6, 1989 revision added a 60-foot long illuminated marquee and canopy which defines the entrance to the theater from K Street, as well as display cases advertising current and coming attractions which flank the doorway. Within the structure, two sets of grand stairs were added connecting the two-story K Street lobby to the theater foyer.
53. The December 6, 1989 submission also substantially increased the project amenity package to include an additional \$1.5 million contribution devoted to the rehabilitation and renovation of up to 150 public housing units. These units will be selected by the Department of Public and Assisted Housing ("DPAH") as part of DPAH's Comprehensive Modernization and Vacant Repair Program. The objective of this program is to bring deficient public housing properties up to modern standards and to bring vacant, uninhabitable units back into use. The applicant will commit the aforementioned funds to this purpose and the applicant will undertake and complete the repair and renovation work, pursuant to DPAH specifications.
54. By supplemental report dated December 28, 1989, the Office of Planning reviewed the December 6, 1989 revised project design and enhanced amenity package. OP noted that the amenities package totaled \$21.03 million with the additional \$1.5 million proffer to the Department of Public and Assisted Housing ("DPAH") or "a noteworthy" 83 percent of the value of the additional FAR proposed over matter-of-right zoning. OP concluded that an amenities package of this magnitude was adequate and would provide a substantial benefit to the District.
55. In regard to the Commission's concerns about the bulk of the building, OP concluded that a reduction in the

height of the PUD would not address the real problem of the perceived bulk of the project. OP concurred with the applicant's solution of setting back the center portion of the building, thereby effectively producing two appropriately configured buildings separated by an "in-fill building" set back from the street.

56. Finally, on the issue of theater identity, OP reported that the 60-foot long marquee and the proposed changes inside the building sufficiently enhanced the identity of the theater.
57. There was no written report from ANC 2A concerning the December 6, 1989 revised application.
58. Maria Tyler, by letter dated January 2, 1990, concluded that the applicant's December 6, 1989 revised application failed to respond to the concerns raised by the Zoning Commission and failed to satisfy the PUD requirements of Chapter 24 of the Zoning Regulations. Ms. Tyler stated that the value of the amenity package was not commensurate with the value of the FAR sought by the applicant.
59. The Commission concurs with the position of the Office of Planning, and others. The Commission finds that the applicant has made a substantial effort in addressing the concerns of the Commission with respect to the building's mass and architectural detailing. The revised design is "fine-tuned" and a number of compositional massing tactics transform the scale of the building and diminish the perceived bulk. The Commission further finds that the building is appropriate for the urban design context of the site and Pennsylvania Avenue.
60. As to the concerns of ANC 2A regarding conditions of approval, the Commission finds that it has adequately addressed those concerns in its decision.
61. The Commission finds that the amenities package justifies the requested 2.34 FAR increase over the permitted matter of right C-3-C FAR of 6.5. The Commission believes that the provision of a theater is a costly, risky venture even though the applicant possesses expertise and experience in theater operations. The Commission is persuaded by the applicant's economic expert that OBED in formulating its recommendation failed to consider such relevant facts as the negative impact of a theater on the retail and office portions of the project; the \$3,462,000 million net income loss associated with the provision of a through square connection; and the fact that the applicant revised its proposal to add an additional

subsidy to the theater (i.e., no base rental charge in years 15 to 25 of the theater existence). Moreover, subsequent revisions to the amenity package, notably the guaranteed \$11.3 million theater amenity and the \$1.5 million contribution to DPAH, significantly increased the value of the amenities package.

62. As to the concerns of Maria Tyler, the Foggy Bottom Citizens' Association, and others, the Commission finds that the existing road network can accommodate the traffic generated by the project. Moreover, the proposed parking and loading facilities are adequate for peak hour demand. The Commission believes the traffic management plan which the applicant has agreed to implement will respond to the transportation related concerns.
63. The Commission finds that the project's design, the theater and the scholarship program are amenities designed to benefit the surrounding neighborhood. The theater responds to neighborhood requests made at the time the Circle Theater closed its door to include a theater in any redevelopment of the site. The theater will also generate life and activity in the neighborhood.  
The Commission further thinks it is appropriate for this particular applicant to provide an arts-related amenities package. The applicant's talents and expertise are well suited to the arts. Moreover, the Commission finds that the amenities package, as proposed and subsequently enhanced, is adequate and that the cash contribution to WETA satisfies the condition set forth in the ANC's written report on the subject application.
64. As to the concerns of SEIU regarding the banning of individuals by the applicant's management company, the Commission believes that this matter will appropriately be resolved by the courts. The Commission finds, however, that the specific inclusion of a condition of approval for compliance with the Human Rights Act is appropriate.
65. The Commission finds that the applicant has met the requirements of 11 DCMR Chapter 24 and has satisfied the intent and purpose thereof.
66. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated April 5, 1990, indicated that the PUD would not adversely affect the Federal Establishment or other

Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

#### CONCLUSIONS OF LAW

1. The planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned commercial and mixed-use developments which will offer efficient overall planning and design not achievable under matter-of-right development.
3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.
5. The approval of this application is consistent with the purpose of the Zoning Act.
6. The proposed application can be approved with conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2A the "great weight" consideration to which it is entitled.
9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

#### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a planned unit development for lots 9, 26, 27, 47, 48, 800, 806, 807, 812, 825, 829, 834 and 837 in Square 74. The approval of this planned unit development

is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the revised plans submitted by Michael Graves, and Vlastimil Koubek, Architects, marked as Exhibits No. 63, 64, 71, 92 in the record as modified by the guidelines, conditions and standards of this order.
2. The PUD site shall be developed as a mixed-use building consisting of retail, office and a theater/auditorium facility.
3. The FAR for the building shall not exceed 8.84, excluding the mechanical penthouse.
4. The height of the building shall not exceed one hundred thirty (130) feet, excluding the mechanical penthouse and elevator machine rooms.
5. The lot occupancy of the building shall not exceed 92%.
6. The applicant shall provide a theater/auditorium facility in the project. The theater shall be located, as indicated on sheets ZA4 and ZA5 of the December 6, 1989 plans, marked as Exhibit No. 92B of the record, on the 2nd and 3rd cellar levels.
7. Parking shall be provided as indicated on sheets ZA2, ZA3, ZA4, ZA5, ZA6 and ZA7 of the December 6, 1989 plans, marked as Exhibit No. 92B of the record, or in the alternative, in accordance with a stacked attendant parking plan consistent with the requirements of Section 2115.9 through 2115.18 of the Zoning Regulations.
8. The applicant shall implement a transportation management plan involving a coordinated strategy to reduce the traffic impact of the Project and encourage use of mass transit including the provisions of information on ride-sharing programs and public transportation alternatives.
9. The parking garage shall be properly managed to ensure its effective functioning and to ensure that parking spaces are readily available for office, retail and theater patrons of the Project.
10. Loading activity for the PUD Project shall be in accordance with sheet ZA7 of the December 6, 1989 plans, marked as Exhibit No. 92B of the record.



11. The applicant shall provide landscaping and streetscape improvements in accordance with sheet ZA1 of the December 6, 1989 plans listed in the record as Exhibit No. 92B or as otherwise required by the District of Columbia streetscape standards.
12. The applicant's architect shall specify a tenant standard for retail signage consistent with the illustrative sketch labeled "Exhibit A" of Exhibit 71 of the record.
13. Exterior lighting shall be provided as described in the applicant's Exterior Lighting Plan outlined in Exhibit No. 71 of the record, except that only the belvedere shall be fully lit and not the entire facade.
14. The project windows shall be clear glass or tinted green glass pursuant to the specifications set forward in Exhibit "C" of Exhibit No. 71 of the record.
15. The applicant shall form and fund a nonprofit organization called the Circle Arts Society which shall be responsible for managing the scheduling, operations and finances of the theater.
16. The applicant, and its successors and assigns, shall lease the theater to the Circle Arts Society for a period of 25 years from the date a Certificate of Occupancy is granted for the building. From year one through year twenty-five, no base rent shall be charged for the theater. After the twenty-fifth year, Circle Arts Society shall have the right to negotiate a new, mutually agreeable lease under a first-right of negotiation.
17. The applicant shall provide for the Circle Arts Society to underwrite the operating costs of the theater for 15 years from the date a Certificate of Occupancy is granted for the building. The applicant, its successor or assigns shall guarantee this subsidy during the initial 15 year period.
18. At the end of the initial 15-year period, the applicant shall require the Circle Arts Society to prepare a comprehensive report to the D.C. Commission on the Arts and Humanities (D.C. Arts Commission) detailing the amount of operating subsidies provided to the theater over the 15-year period. In the event that the total amount of subsidy paid by the applicant during this period is less than \$11.3 million, the applicant will then pay the difference to the Circle Arts Society. The Circle Arts Society will apply the funds to the operating costs of the theater during the next 10-year period of the theater's existence.

19. The applicant shall establish an advisory board to assist the Circle Arts Society with the programming of the live theater productions. The advisory board shall consist of five members, three of which shall be appointed by the D.C. Arts Commission. The Circle Arts Society shall designate the two remaining representatives.
20. The applicant shall provide for the project theater to be made available for live performances for a minimum of 18-26 weeks per year and for repertory film bookings for a minimum of 26-34 weeks per year.
21. The applicant shall provide for the average use fee for live performances during the first year of the theater's operations to be determined by the D.C. Arts Commission but shall not initially exceed \$750.00 per night. Thereafter, increases are permitted provided that the average fee is less than market rate for comparable theater space and the increase is calculated to reflect the same relationship \$750.00 bears to market rate for rental of comparable theater space during the theater's first year of operation.
22. The applicant shall provide for the Circle Arts Society to be responsible for repertory film bookings. On the average, ticket prices for repertory films shall be not more than 50 to 60% of the price of tickets sold by commercial movie theaters.
23. The applicant shall provide for the Circle Arts Society to keep records of the theater's use by performing arts groups and the fees charged to such groups. On an annual basis the Circle Arts Society will review these records in conjunction with the advisory board to ensure the goals and objectives of live theater are being met.
24. The applicant shall commit \$1.5 million to the renovation and rehabilitation of public housing units. The renovation work will be done by the applicant and the units to be renovated will be selected by the Department of Public and Assisted Housing (DPAH) in consultation with the applicant. The precise number of units to be renovated shall depend on the scope of rehabilitation work required. The work on these units shall commence within four months after a building permit for the PUD project is issued and not less than 70% shall reach completion prior to the issuance of a Certificate of Occupancy for the Project.
25. Upon issuance of a building permit for the project, the

applicant shall transfer \$1 million to a scholarship foundation to be established by the applicant, the Superintendent of the D.C. Public School and the Principal of the Duke Ellington school. The annual income from the \$1 million shall be given to the Duke Ellington Fund (Fund) to be distributed to worthy students or for other uses designated by the directors of the Fund for purposes of assisting students to continue their higher education.

26. The applicant shall comply with the terms of the Memorandum of Understanding between the applicant and the Minority Business Opportunity Commission (MBOC) dated July 19, 1989 and marked as Exhibit "F" of Exhibit No. 29 of the record.
27. The applicant shall comply with the terms of the First Source Agreement between the applicant and the Department of Employment Services ("DOES") dated July 19, 1989 and marked as Exhibit "G" of Exhibit No. 29 of the record.
28. Upon issuance of a building permit for the project, the applicant shall contribute up to \$50,000 toward the improvement of a small park located in the 2100 block of G Street, N.W. There shall be a 10 year maintainance commitment of the park. This condition shall be subject to Board of Education approval of the community's plans to use the park in the 2100 block of G Street as a tot lot. If the Board opposes the creation of a tot lot, the money shall be used for the improvement of Washington Circle.
29. Upon issuance of a building permit for the project, the applicant shall place \$100,000 in an interest bearing escrow account, pursuant to instructions that the money will be transmitted to the West End Tenants' Association. In the event that WETA prevails its civil action and it enters into a contract to purchase 2124 I Street, N.W., the escrow funds shall be applied to reduce related costs incurred by the WETA. If WETA is not successful in its civil suit, the funds shall be donated to the Samaritan Inns or other organization(s) serving the homeless, as designated by ANC-2A. The applicant shall then submit evidence to the Zoning Commission, ANC-2A, and WETA of said donation.
30. The applicant shall be granted flexibility in the final detailing of the building with respect to the following matters:
  - a. Varying the location and design of all interior components, including, but not limited to, partitions, structural slabs, doors, hallways,

columns, stairways, lobbies, atria, location and number of elevators, elevator machine room, and electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building;

- b. Making minor adjustment to the Pennsylvania Avenue and K Street facades and design modification in the theater marquee-porte cochere over the K Street entrance, the porte cochere over the Pennsylvania Avenue entrance, and the use of awnings over the retail space fronting on all thoroughfares;
- c. Making minor adjustments in the facade window and entrance detailing, including the flexibility to shift the location of the windows and doors to the retail uses on the ground floor to accommodate the needs of the retail tenants and the flexibility to change the width and location of the doors to the building lobbies;
- d. Varying the location and type of exterior lighting fixtures;
- e. Varying the species of plant materials set forth in the Landscaping Plan;
- f. Varying the final selection of the exterior materials within the materials types as proposed, based on availability at time of construction;
- g. Varying the arrangement of the parking spaces and modification to the below-grade space to accommodate the needs of the theater, retail and office tenants;
- h. Varying the amount of retail space in the Project, depending on market conditions, provided that a minimum of 50,000 square feet of retail space is provided;
- i. Varying the amount of square footage to be devoted to theater support space, including accessory office space, storage areas, rehearsal space, dressing rooms, entrance foyer and concession areas depending upon the specific needs of the theater companies and the theater operator which will manage and utilize the space;
- j. Varying the amount of vault space to be used for parking, as permitted by the Department of Public Works;

- k. Varying the height of the elevator machine room not more than three feet above the height prescribed by the Regulations; that is, 21.5 feet maximum;
  - l. Varying the design of the exterior facade to include trellises and railings where required for safety purposes such as the roof top terrace, 6th and 9th floor balconies, and turret balconies; and
  - m. Varying other design aspects of the project in order to comply with fire and building code requirements.
31. The PUD approval by the Zoning Commission shall be valid for a period of 2 years from the effective date of this order. Within that time, application must be filed for the building permit, as specified in 11 DCMR 2406.8, and 2406.9. Construction shall start within 3 years of the effective date of this order.
32. No building permit shall be issued for this PUD until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use this property in accordance with this order, or amendments thereto of the Zoning Commission.
33. The Zoning Secretariat shall not release the record of Case No. 89-5C to the Zoning Regulations Division of DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.
34. Pursuant to D.C. Code sec 1-2531 (1987), section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.


Vote of the Zoning Commission taken at the special public meeting on January 11, 1990: 5-0 (John G. Parsons, Maybelle Taylor Bennett, Lloyd D. Smith and Tersh Boasberg, to


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approve with conditons, and George M. White, to approve by absentee vote).

This order was adopted by the Zoning Commission at a special meeting on April 23, 1990 by a vote of 4-1 Maybelle Taylor Bennett, Lloyd D. Smith, and John G. Parsons, to adopt and George M. White, to adopt by absentee vote - Tersh Boasberg, oppose.

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on MAY 18 1990.

  
\_\_\_\_\_  
TERSH BOASBERG  
Chairman  
Zoning Commission

  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

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